88-1078

No. 88-____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

PATRICIA L. PRATT,
Cross-Petitioner,

v.

QUANTUM CHEMICAL CORPORATION,
Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

1. Was it prejudicial error for the District Court to refuse to instruct the jury on safety requirements imposed on the employer by Ohio law?

2. Was it prejudicial error for the District Court to exclude Plaintiff's evidence of Defendant's intentional refusal to provide available safety devices?

3. Was it prejudicial error for the District Court to limit the number of Plaintiff's expert witnesses at the trial of this case involving technical processes, extraordinary injuries and extensive monetary losses, to three?

4. Was it prejudicial error for the District Court to instruct the jury that it could consider punitive damages only in regard to Plaintiff's personal injury claims, and not in regard to the wrongful death claims?

5. Was it prejudicial error for the District Court to comment to the jury on the instructions in a manner that supported Defendant's closing arguments on damages without giving any notice to Plaintiff's counsel of an intention to comment on the instructions?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	I
TABLE OF CONTENTS	III
TABLE OF AUTHORITIES	III
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASON FOR GRANTING THE WRIT	4

TABLE OF AUTHORITIES

Cases	Page
Pratt v. *National Distillers & Chemical Corp.*, 853 F.2d 1329, 1333 (6th Cir. 1988)	3

Statutes

28 U.S.C. § 1254(1)	2

Rules

United States Supreme Court Rule 19.5	2

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Cross-Petitioner respectfully requests that if this Court issues a writ of certiorari in Case No. 88-866, it also issue a writ of certiorari to review the issues that were raised by Plaintiff in the Court of Appeals for the Sixth Circuit but which were not determined by the Sixth Circuit because the issues were moot when the Sixth Circuit reinstated Plaintiff's jury verdict. Plaintiff does not independently seek the issuance of a writ of certiorari on her cross-petition, but seeks only to preserve the issues raised by her on appeal in the event that this Court grants a writ of certiorari in the Defendant's Petition in Case No. 88-866.

OPINIONS BELOW

The opinion of the Court of Appeals is contained in the Appendix of both the Petitioner's Brief and Respondent's Brief

filed in Petition No. 88-866. The determinations of the trial court relating to this cross-petition are contained in the voluminous trial transcript in this case and the filings in the District Court, which exceed 1,000 pages, and will be provided to this Court in the event that the Court issues a writ of certiorari.

JURISDICTION

The judgment of the Court of Appeals was entered on August 1, 1988. Defendant's petition in the Sixth Circuit for a rehearing was denied on September 19, 1988. This Court has jurisdiction to review the judgment of the Court of Appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1). The petition for a writ of certiorari in Case No. 88-866 was received by counsel for Respondent/Cross-Petitioner on November 25, 1988, and this cross-petition for a writ of certiorari is filed under, and in reliance upon, U.S. Sup. Ct. Rule 19.5.

CONSTITUTIONAL PROVISIONS INVOLVED

There are no constitutional provisions involved either in this cross-petition or in the petition filed in Case No. 88-866.

STATEMENT OF THE CASE

A full statement of the case is contained in Respondent's Brief filed in Case No. 88-866. The District Court refused to allow Plaintiff to present evidence to the jury of Defendant's intentional refusal to provide reasonably available safety devices to protect its workers. Additionally, the District Court refused to instruct the jury on safety requirements imposed on employers by Ohio law. Additionally, the District Court limited the number of Plaintiff's expert witnesses at trial to only three, in this case which involved evidence of technical procedures, severe injuries, and extensive financial losses. Additionally, the District Court Judge erroneously instructed the jury that it could consider punitive damages only in regard to Plaintiff's personal injury claims and not in regard to the wrongful death claims. The Court should have instructed on punitive damages in regard to the Defendant's wrongful malicious acts, not in regard to whether those acts caused the personal injuries or whether they caused the death. Finally, the District Court Judge commented to the jurors on the jury instructions, without any previous indication or warning to counsel, in a manner that supported Defendant's closing arguments on damages, and contradicted Plaintiff's arguments.

Plaintiffs filed a cross-appeal in the United States Court of Appeals raising each of these issues; however, Plaintiff advised the Court that she was willing to accept the jury's verdict, if reinstated by the Appeals Court, and would not pursue her rights arising out of the errors committed by the District Court Judge against her. Hence, the Court of Appeals found it unnecessary to address the issues that are the subject of this petition. *Pratt* v. *National Distillers & Chemical Corp.*, 853 F.2d 1329, 1333 (6th Cir. 1988).

Plaintiff files this cross-petition only for the purpose of preserving these issues in the event that this Court issues a writ of certiorari as to Defendant's Petition in Case No. 88-866.

REASON FOR GRANTING THE WRIT

The only reason for granting the Plaintiff's cross-petition for a writ of certiorari is to protect Plaintiff's rights if this Court issues a writ of certiorari in Case No. 88-866, and if this Court reversed Plaintiff's judgment and required her to undergo yet a third round of trials and appeals in this case. Otherwise, the Plaintiff's cross-petition should be denied.

The authority supporting each of the issues raised in this cross-petition are irrelevant for purposes of granting Plaintiff a writ of certiorari. If the Court grants a writ of certiorari, we will provide all authority in support of the issues stated above.

Respectfully submitted,

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